

Memorandum



Date: July 16, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the name in the "From:" field.

Agenda Item No. 8(H)(1)

Subject: Resolution Authorizing the Mayor to Execute an Access Agreement with the School Board of Miami-Dade County for Hammocks Middle School Property

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the Mayor or Mayor's designee to execute an access agreement with the School Board of Miami-Dade County (School Board) to allow remediation activities at the Hammocks Middle School property.

Scope

Hammocks Community Park is located at 9885 Hammocks Boulevard and Hammocks Middle School is located at 9889 Hammocks Boulevard. Both the school and park are in Commission District 11, Commissioner Juan C. Zapata.

Fiscal Impact/Funding Source

There is no fiscal impact for the access agreement; however, the funding for the work contemplated under this item will come from \$779,145 from BBC/GOB Project #113, Wild Lime Park and \$1,470,855 from BBC/GOB Project #115, Olympic Park contingent upon approval by the Board of a significant modification and approximately \$291,000 from impact fees.

Track Record/Monitor

PROS' project manager, Li Gurau, will monitor the access agreement and remediation activities.

Background

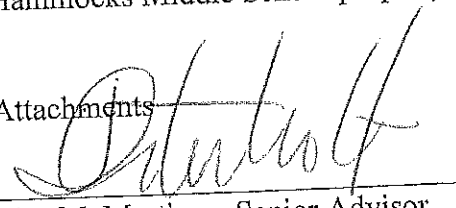
Hammocks Community Park is a heavily used 15-acre community park, serving not only students of the adjacent Hammocks Middle School, but all those who live in the surrounding West Kendall neighborhood and families throughout the County who come to Hammocks Park for sport and recreation. PROS has been using and operating the park property and a portion of the adjacent School Board property under a joint use agreement with the School Board since 1990. The Optimist Club of Kendall Hammocks runs a very successful baseball program under a programming partnership permit with PROS. This baseball program serves more than 400 children, year-round, Mondays through Saturdays. The park is also used for recreation by the adjacent public Hammocks Middle School, which has an enrollment of 1,184 children. Furthermore, there are more than 200 children enrolled in summer camp and approximately 40 children in the after-school program at the park. The park's recreation center, racquetball courts, tot-lot and school track are also very active.

Random testing in August, 2012 by Miami-Dade County's Regulatory and Economic Resources Department (RER) revealed that the park and a portion of the middle school field had elevated levels of arsenic in the soil. The documented arsenic levels were on average 20 times higher than background for the surrounding areas. Although the park remains open for all regular activities, it is RER's position that mitigation of the arsenic is necessary and the Miami-Dade Health Department supports that position. A public meeting was conducted on November 8, 2012 at the West Kendall Regional library located at 10201 Hammocks Boulevard, where representatives of PROS, RER, the Health Department and School Board made themselves available to answer questions. In addition to the public meeting, notice of Hammocks Community Park's contamination issue was sent to the parents of Hammocks Middle School students. Upon discovery of the arsenic impacts to the soils at the park, in the abundance of caution, RER required immediate action be taken to minimize any risk to the public. PROS conducted Phase I of the mitigation project in early November 2012, by spreading one inch of clean material over the portion of the affected areas owned by PROS.

The Phase II of the mitigation project is to place 12 inches of clean soil on the affected areas covering the arsenic impacted soils at an estimated cost of \$2.54 million. In some cases, to properly contour the site, the contaminated soil will have to be excavated and properly disposed of and new clean soil imported to the site. This plan also includes the preservation of all existing buildings and structures including drainage, irrigation and lighting during construction. The construction work will be coordinated with the school administrative staff and the Optimist Club of Kendall Hammocks to minimize disruption to their needs. However, relocating the baseball program during the construction phase will most likely be necessary.

In November of 2012, PROS contracted a consultant through the E08-DERM-01 contract to design and provide construction documents for Phase II of the mitigation project. In April 2013, 100% completion of Phase II mitigation construction documents were received by RER and PROS. RER and PROS are working closely with the School Board on the review of the construction documents and on the planning of the actual field work. The mitigation construction work is scheduled for late summer of 2013 during school recess. The necessary construction activities by a contractor to be hired by the County on the Hammocks Middle School property will require access permission from the School Board.

Attachments



Lisa M. Martinez, Senior Advisor
Office of the Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 16, 2013

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(H)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(H)(1)
7-16-13

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR OR MAYOR'S
DESIGNEE TO EXECUTE AN ACCESS AGREEMENT WITH
THE SCHOOL BOARD OF MIAMI-DADE COUNTY FOR
HAMMOCKS MIDDLE SCHOOL PROPERTY AT 9885
HAMMOCKS BOULEVARD

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the Mayor or Mayor's designee to execute the Access Agreement between the School Board of Miami-Dade County and Miami-Dade County in substantially the form attached hereto, upon approval by the County Attorney's Office.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jean Monestime
Sen. Javier D. Souto
Juan C. Zapata

Esteban L. Bovo, Jr.
Audrey M. Edmonson
Barbara J. Jordan
Dennis C. Moss
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of July, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MAG

Miguel A. Gonzalez

ATTACHMENT A

ACCESS AGREEMENT ALLOWING MIAMI-DADE COUNTY TO CONDUCT REMEDIATION ACTIVITIES AT HAMMOCKS MIDDLE SCHOOL CAMPUS

THIS AGREEMENT TO ALLOW MIAMI-DADE COUNTY TO CONDUCT REMEDIATION ACTIVITIES AT HAMMOCKS MIDDLE SCHOOL CAMPUS ("Agreement"), is made and entered into this _____ day of _____ 2013, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic organized under the laws of the State of Florida ("Board" and "School District"), whose principal address is 1450 NE 2nd Avenue #923, Miami, Florida, 33132, and MIAMI-DADE COUNTY, a municipal corporation of the State of Florida ("County"), authorizing the County, at the County's sole cost and expense, to conduct remediation required by its Department of Regulatory and Economic Resources ("RER") at Hammocks Middle School Campus, located at 9885 Hammocks Boulevard, Miami, FL ("Site") in accordance with terms and conditions set forth herein. School District and County shall individually be referred to herein as "Party" and collectively as "Parties".

IN CONSIDERATION of the Sum of Ten Dollars (\$10.00) and the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following terms and conditions:

1. **Site Description:** The County, its agents, employees and representatives shall be authorized to access the Site, situated in Miami-Dade County, Florida, as described in Folio # 30-5904-008-0010, and as more particularly described as follows:

Tract A, of PLUMWOOD AT THE HAMMOCKS, according to the Plat Thereof, as recorded in Plat Book 116, at Page 29, of the Public Records of Miami-Dade County, Florida.

for the sole purpose of effecting soil remediation activities required by RER adjacent to Hammocks Community Park.

2. **Remediation/ Work/ Engineering Plans:** The County's access thereto shall be for the expressed and limited purpose of performing all remediation activities of the Site ("Remediation"), included in the RER approved Engineering Plans ("Engineering Plans"), collectively the "Work", at County's sole cost and expense. The Work shall take place at a mutually acceptable scheduled time after approval of the Engineering Plans by RER. The proposed Engineering Plans, the final design of which shall result in the installation of a 12 inch "cap" of clean fill material throughout and sod in certain areas, shall eliminate exposure to arsenic contaminated soil. The design of the Engineering

Plans shall be coordinated with the School District at the 75% and 100% dry run phases to achieve concurrence and ensure that no detrimental impacts occur to the school's facilities and structures, and that the area subject to the Work is restored to the previous physical conditions or equivalent. Furthermore, the design of the Engineering Plans shall not cause harm to the health, safety or well-being of the students, faculty and staff of Hammocks Middle School. The Work shall be fully bonded in accordance with Florida Statutes 255.05. The County may waive bonding requirements if the Work is valued at less than \$200,000 as allowed by statute. All Consultant/Contractors, as defined hereinafter, shall be pre-qualified by the School District prior to commencement of the Work.

3. Coordination of Work:

3.1 It is further agreed that the County shall in all cases coordinate all of the Work at the Site, including but not limited to any excavations which may be required, with the Board or its designee prior to initiating the Work. Any damage to underground improvements or utility lines caused by the County, its contractors, employees or agents, shall be repaired by the County, at the County's sole cost and expense. In conformance with Article 3.2 of this Agreement, and given the need to assure the safety and well being of students, faculty and staff at Hammocks Middle School during regular school hours on regular school days, the County shall make the Board or its designee, aware of the Work that will take place on Site, a minimum of five (5) working days prior to initiating any such work.

3.2 Prior to undertaking the Work, and subject to any other requirements or conditions of this Agreement, the County shall provide the Board, or its designee, with a proposed schedule for such Work at the Site, for concurrence by the Board, or its designee, such concurrence not to be unreasonably withheld. Reasonable costs and expenses incurred by the Board, as evidenced by invoices or other documentary evidence reflecting the Board's payment of such reasonable costs and expenses, in connection with the County's Work shall be at the County's sole cost and expense, not to exceed Seven Thousand Five Hundred Dollars (\$7,500). Any activities that take place on or immediately adjacent to any of the Site shall be performed in a manner not to unreasonably interfere with the educational activities or operations taking place at Hammocks Middle School to the extent feasible and agreed upon by both Parties. The entire construction Site will be closed and fenced during the construction phase.

4. Compliance with Laws: The County's Work at the Site shall be done in compliance with all applicable rules, statutes, codes and regulations, including, without limitation, the State Requirements for Educational Facilities, the Florida Building Code and the Jessica Lunsford Act, as they may be amended from time to time. If the Board, or its designee, requests in writing, except in the event of an emergency, in which case prior written notification will not be required, that the County cease any of its Work due to violation of any applicable rules and regulations concerning safety, including the Board's safety criteria, then the County shall immediately discontinue its activities. The

County shall be entitled to proceed with the Work upon the Board's, or the Board's designee, review and acceptance, within forty-eight (48) hours of its submission, of a plan to rectify the safety violation(s) causing stoppage of the Work. The Board or the Board's designee shall not unreasonably withhold acceptance of the County's proposal to rectify any safety violation(s) causing stoppage of the Work. At the conclusion of the Work, the areas where Work was conducted on the Site shall be restored, at County's sole cost and expense, to the previous physical condition or equivalent and safe and secure, as detailed in the approved Engineering Plans and previously agreed upon by both Parties.

5. **Indemnification by County:** The County does hereby agree to indemnify and hold harmless the Board, subject to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the County arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the County.

6. **County's Consultant/Contractors:** It is understood and agreed between the Parties, that the County shall include the following provisions in its contract ("**Contract**") with any and all Consultant/Contractors and/or contractors, relating to the Work to be performed at the Site ("**Consultant/Contractor**"), as it relates to indemnification and insurance, as follows:

6.1. **Indemnification:** The Consultant/Contractor shall indemnify and hold harmless the County and Board their officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County and Board or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of action, or proceedings of any kind or nature arising out of, relating to or resulting from the negligent performance of this Contract, recklessness or intentional wrongful misconduct by the Consultant/Contractor or its employees, agents, servants, partners, principals, or subcontractors. Consultant/Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the County and the Board, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Consultant/Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Consultant/Contractor shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the County and Board or their officers, employees, agents, and instrumentalities as herein provided.

6.2. **Insurance:** The Consultant/Contractor shall not commence any Work pursuant to this Agreement until all insurance required under this Article has been obtained and such insurance has been approved by the County's Risk Management Division. The Consultant/Contractor shall maintain during the term of this Agreement and furnish to the County and the Board their certificates of insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

6.2.1 Worker's Compensation Insurance for all employees of the Consultant/Contractor as required by Florida Statute 440, as presently written or hereafter amended.

6.2.2 Public Liability Insurance, on a comprehensive basis, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County and The School Board of Miami-Dade County, Florida must be named as an additional insured with respect to this coverage.

6.2.3 Pollution Liability Insurance in an amount not less than \$500,000 combined single limit per occurrence.

6.2.4 Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Work, in an amount not less than \$500,000 per occurrence combined single limit for bodily injury and property damage. Under no circumstances is the Consultant/Contractor permitted on Miami-Dade County airport property, Airside Operation Area, without increasing automobile coverage to \$5,000,000.

6.2.5 Professional Liability Insurance in the amount of \$1,000,000 providing for all sums which the Consultant/Contractor shall become legally obligated to pay as damages for claims arising out of the services performed by the Consultant/Contractor or any person employed by the Consultant/Contractor in connection with this Agreement.

6.2.6 The Consultant/Contractor shall furnish certificates of insurance to the County's Risk Management Division, Suite 2460, Miami-Dade Center, 111 N.W. First Street, Miami, Florida, 33128-1987 and to the School District's Office of Risk and Benefits Management 1501 NE 2nd Avenue, Suite 324, Miami, Florida, 33132, prior to the commencement of the Work, which certificates shall clearly indicate that the Consultant/Contractor has obtained insurance in the type, amount and classification as required for strict compliance with this Article and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior written notice to the County and to the Board.

6.2.7 Compliance with the foregoing requirements shall not relieve the Consultant/Contractor of the liabilities and obligations under this Article or under any

other portion of this Agreement. The Consultant/Contractor shall not commence any Work pursuant to this Agreement until all the required insurance coverages have been obtained and such insurance has been approved by the County's Risk Management Division and The School Board of Miami-Dade County.

6.2.8 As a precondition to the County or County's Consultant/Contractor accessing the Site for the purpose of commencing the Work, the County shall: (1) provide to the Board all insurance certificates or other proofs of insurance required under this Agreement, acceptable to the Board's Office of Risk Management, and (2) schedule and coordinate the Work with, and receive approval from, the Board or designee.

7. **Sovereign Rights:** It is expressly understood that notwithstanding any provisions of this Agreement and the County's status hereunder, the County retains all of its sovereign rights, prerogatives, and regulatory authority (quasi-judicial or otherwise). Without limiting the foregoing:

7.1 The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction, development, and/or remediation of Hammocks Middle School campus, or be liable for the same; and,

7.2 The County shall not by virtue of this Agreement be obligated to grant any approvals of applications for building, zoning, planning, development and/or remediation under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or remediation of Hammocks Middle School campus.

8. **Governing Laws/ Venue/ Attorney's Fees:** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. In the event of any dispute with respect to this Agreement, the Parties agree that venue shall be in Miami-Dade County, Florida. Each Party shall be responsible for its own attorney's fees and costs incurred as a result of any action or proceeding under this Agreement.

9. **Survival:** Those provisions which by their nature are intended to survive the expiration, cancellation or termination of this Agreement, including by way of example only, the indemnification provision, shall survive the expiration, cancellation or termination of this Agreement.

10. **Notices:** Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and deemed to have

been served and given if delivered by e-mail or in person to the address listed below for each Party. If mailed, said notice must be sent by certified mail, return receipt requested, and the effective date will be the date received. The address of the Parties for all purposes under this Agreement and for notice hereunder shall be as follows:

As to the Board:

The School Board of Miami-Dade County, Florida
1450 NE 2nd Avenue, Room 923
Miami, FL 33132
Attn: Mr. Jaime Torrens, Chief Facilities Officer

With Copy to:

Walter J. Harvey, Esquire
School Board Attorney
1450 NE 2nd Avenue #430
Miami, FL 333132

As to the County:

Miami-Dade County Mayor
Stephen P. Clark Center
111 Northwest 1st Street, 29th Floor
Miami, Florida 33128

With a copy to:

Director, Miami-Dade County Parks,
Recreation, and Open Spaces Department
275 Northwest 2nd Street, 5th Floor
Miami, Florida 33128

and

County Attorney
Stephen P. Clark Center
111 Northwest 1st Street, 29th Floor
Miami, Florida 33128
Attn: Mr. Miguel A. Gonzalez, Assistant County Attorney

11. **Effective Date/ Completion of Work:** This Agreement shall be effective as of the above date ("Effective Date"), and continue and remain in full force and effect covering the Site until completion of Work evidenced by Closure Letter to Board issued by RER, but not later than 115 calendar days from the County's issuance of Notice to

Proceed to Consultant/Contractor. Notice to Proceed shall be issued by no later than one year from the Effective Date of this Agreement. Notwithstanding the foregoing, the County, through its Mayor or the Mayor's Designee, for good cause shown, may request from the Board, through its Chief Facilities Officer, extensions of time for the completion of the Work, and the Board may not unreasonably withhold consent to the County's requested time extensions.

12. **Termination at Will:** Notwithstanding the above, the Board may terminate this Agreement at any time by providing prior written notice to the County.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Board and the County hereby represent that they have caused this Agreement to be executed by their respective and duly authorized officers the day and the year first hereinabove written.

COUNTY:
MIAMI-DADE COUNTY

BOARD:
THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Alberto M. Carvalho
Superintendent of Schools
Date: _____

ATTEST:

**TO THE BOARD: APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

By: _____
County Clerk

School Board Attorney

**TO THE COUNTY: APPROVED AS TO
LEGAL FORM AND SUFFICIENCY:**

By: _____
County Attorney